

January 23, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

700 Central Building
810 Third Avenue
Seattle, Washington 98104

REPORT AND DECISION ON AN APPEAL FROM THRESHOLD DETERMINATION.

SUBJECT: Department of Development and Environmental Services File No. L95P0007

EVERGREEN GARDEN
SEPA Appeal

Property located south of N.E. 8th Street between 205th Avenue N.E. and 208th Avenue N.E. on the East Sammamish Plateau

Applicant: Shun Yuan Limited, Inc., represented by
De-En Lang
Subdivision Management
16031 119th Place N.E.
Bothell, WA 98011

Appellants: Enayat and Mauri Aziz
919 206th Place N.E.
Redmond, WA 98053

PRELIMINARY REPORT:

The Report on the above-referenced appeal was received by the Examiner on November 22, 1995.

PUBLIC HEARING:

After reviewing the Report of the Environmental Division, examining available information on file with the application and visiting the property and surrounding area, the Examiner conducted a public hearing on the appeal as follows:

The appeal hearing on Item No. L95P0007, combined with the hearing on the proposed plat of Evergreen Garden, was opened by the Examiner at 9:18 a.m., December 7, 1995, in Room No. 2, Department of Development and Environmental Services, 3600 - 136th Place SE, Suite A, Bellevue, Washington, and adjourned at 5:30 p.m. The hearing continued at 10:37 a.m., January 3, 1996, and adjourned at 4:43 p.m. The combined hearing continued at 9:17 a.m., January 4, 1996, and adjourned at 3:15 p.m., having been administratively continued to January 16, 1996, at which time the SEPA hearing record closed. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant proposes to subdivide a 3.62-acre parcel into 11 single-family residential building lots, yielding a lot development density of three dwelling units per acre. Lot sizes will range from approximately 10,000 to 11,000 square feet. The property is classified R-4, permitting urban residential development at a base density of four units per acre. The property is located within the East Lake Sammamish Community Planning Area.
2. On September 5, 1995, the King County Environmental Division (the "Division") published its

Determination of Non-Significance ("DNS") regarding the proposed development. That is, the Department published its determination that the probable adverse impacts of the development upon the environment were not "significant", and therefore preparation of an Environmental Impact Statement ("EIS") should not be required.

On September 20, 1995, Enayat and Mauri Aziz (the "Appellant") filed timely appeal from the Environmental Division's DNS. The appeal addresses environmental concerns regarding the following:

- A. Whether traffic analysis and mitigation is adequate for neighborhood streets, affected intersections with Inglewood Hill Road, and 206th Avenue/Place N.E., a private drive;
 - B. Whether existing trails on the subject property should be preserved;
 - C. Whether analysis of wildlife impact and mitigation is adequate; and,
 - D. Whether steep slope buffers will be adequate to assure slope stability and minimize erosion.
3. Regarding traffic information, analysis, impacts, and mitigation, the following findings are relevant:
- A. The Appellant resides on 206th Place N.E., a narrow, one-lane partially paved private drive extending northward from N.E. 9th Street (near the subject property) to Inglewood Hill Road. Access to 206th Place N.E. may be obtained from the subject property through a moderately circuitous route, driving northward on 206th Avenue N.E., then eastward along a narrow gravelly one-lane road (within otherwise undeveloped N.E. 9th Street right-of-way), then northward again along 206th Place N.E.
- This private drive undulates vertically with steep rises, drops, particularly at the north and south ends. It is characterized by speed bumps in some locations, no shoulders, heavy roadside vegetation in some places, densely parked vehicles in others. Due to the vertical undulation, sight distance is limited along the route.
- The 206th Place N.E. private easement drive consists of some portions which are unpaved, is characterized by sight distance deficiencies along its entirety, and is not wide enough to accommodate two vehicles travelling in opposite directions.
- B. The proposed access routes to the proposed development extend southward and eastward from Inglewood Hill Road; eastward on N.E. 11th Street to 207th Avenue N.E., then southward to the subject property; and, southward along 210th Avenue N.E., then jogging eastward along N.E. 8th Place, 209th Avenue N.E., and, finally, N.E. 8th Street to the subject property. Along these two off-site access routes the Department of Development and Environmental Services ("DDES") will require limited improvements "to provide acceptable access to the proposed subdivision". The required improvements will be directed toward resurfacing, restoration, and rehabilitation. However, in some areas additional work will be required; in particular, improvements to increased turning and passage safety at the 207th Avenue N.E./N.E. 11th Street intersection, and sight distance improvement at the Inglewood Hill Road intersections with 210th Avenue N.E. and N.E. 11th Street.
- In addition, the Applicant will be required to improve the subject property frontage consistent with KCRS urban sub-access street standards.
- C. The Appellant challenges the adequacy of the traffic analysis (or lack thereof) conducted regarding the proposed development. In addition, the Appellant challenges the Department's acceptance of the Applicant's consultant's traffic distribution assumption that average daily trips and peak hour trips received by the private 206th Place N.E. drive will be minimal. The Appellant, a traffic engineer with Aziz Engineering, argues that 206th Place N.E. will be used heavily because the travel time from the subject property to Inglewood Hill Road (particularly westbound) is competitive with the other routes anticipated and planned by the Department and the Applicant. William Popp Associates, also traffic engineers and planners, contends that the deficiencies of the street (described in Finding No. 3.A, above) will discourage plat-generated traffic.

4. Regarding the on-site trails, the following findings are relevant:

- A. When trespass law is considered, the trails on the subject property don't appear to go anywhere. To the east, the principal trail route ends at a retaining wall developed upon the easterly abutting property. Other peripheral or tributary trails "feather out" on that same property. Westbound, the trail also ends at a private property boundary. The generally east/west route of the trail runs along the north boundary of a permanent open space tract set aside by the neighboring plat of Tlingit Addition. The Tlingit Addition open space tract was established to protect a steep ravine within its boundaries. The trail in dispute meanders along the ravine's north top of slope, sometimes within the required Evergreen Garden buffer area, sometimes within proposed Evergreen Garden lot area, and sometimes encroaching within the Tlingit Addition permanent open space tract.

A significant portion of the trail, extending downhill as it progresses westward, apparently has been graded, with cut on the north side of the graded route and both cut and sidecast on the south side of that route. Some neighborhood residents argue that the trail is historic and had been used by Indians prior to European settlement of the area. However, the record contains no documentation of this assertion.

- B. Department Staff has determined that long-term continuing access to the trail would be potentially degrading to the slope and stream below and that, therefore, a condition requiring its preservation would not be reasonable. In addition, as noted above, preservation of the trail would interfere with the required top of slope protective buffer; whereas, with access to the trail denied, natural revegetation (and therefore increased top of slope stability) should emerge.
- C. The Appellant argues that the trails are an established part of the neighborhood fabric, used by neighborhood residents on an "almost daily" basis. In addition, neighborhood residents have used the trail to obtain access to East Lake Sammamish Parkway and to Inglewood Beach Park at Lake Sammamish. The Appellant concedes that short subdivision and development of property located immediately west of the subject property has blocked that route. Consequently, it is argued, that this more recent development (Evergreen Garden) should be burdened with the task of identifying and providing trail locations or relocations to satisfy neighborhood demand for pedestrian access to the west.
- D. The Applicant argues that the westward pedestrian access enjoyed by the neighborhood in the past has been feasible only due to trespass upon private properties, whereas several undeveloped public street rights-of-way exist. No determinative assessment has been conducted regarding the feasibility of such alternative routes.

5. Regarding wildlife information, analysis, impacts and mitigation, the following findings are relevant:

- A. The subject property is heavily wooded with tall evergreens, principally Douglas fir and cedar, with a dense understory (except where trails and limited grading has occurred). The Division agrees that, "As relatively mature, second-growth cedar-rich forest, the Evergreen Garden site doubtless provides quality wildlife habitat".
- B. The subject property is located within the designated urban area by the 1994 Comprehensive Plan. The Plan determines that wildlife value on urban lands are not significant unless the preservation of the land is necessary to protect endangered, threatened, or sensitive species or to preserve the continuity of designated habitat networks.
- C. The subject property is not incorporated within a "designated habitat network".
- D. The hearing record contains no evidence that any endangered, threatened or sensitive species forage, nest or reside on the property.
- E. The Applicant will be required to establish a natural buffer at the top of ravine slope. The purpose of the buffer is to assure public safety and slope stability. However, it has the incidental benefit of preserving the existing vegetation within that area. Thus, no

disturbance of the ravine slopes will occur. (See, however, paragraph 6.D, below, regarding the high density polyethylene "Drisco pipe" drainage discharge to George Davis Creek.)

- F. The King County Surface Water Management Division ("SWM") is planning additional stream restoration and habitat improvement for George Davis Creek. The habitat will be improved, SWM has concluded, by installing tree stumps and similar natural stream obstructions in a pattern which provides for pools, rivulets, shade and other similar fisheries habitat enhancement features.
 - G. In addition to the top of slope vegetated buffer which must be preserved, an additional 15-foot building setback line (BSBL) will be established to protect the vegetated buffer from degradation as a result of construction.
 - H. Approximately one-half of proposed Lot No. 1 and approximately one-third of proposed Lot No. 2 will be retained as permanent open space within recorded Native Growth Protection Easements.
6. Regarding information, analysis, impacts and mitigation affecting steep slopes, the following findings are relevant:
- A. The subject property has been topographically surveyed and mapped at five-foot intervals, indicating that substantial portions of proposed Lot Nos. 1 and 2 will be located within slopes exceeding 40% and that slight portions of proposed Lot Nos. 3 through 7 also contain steep slopes.
 - B. All steep slopes must be retained as they exist, complete with presently existing forest and understory. The Division's Report to the Examiner erroneously indicates that the DDES geotechnical staff has concluded that a 10-foot buffer would be adequate to preserve the integrity of these slopes. No such determination has been made. County sensitive areas regulations authorize requiring a top-of-slope buffer up to 50 feet wide. Consistent with the ordinary and usual review procedures for steep slopes, the Department will require additional geotechnical analysis before determining the top-of-slope buffer which will be required.
 - C. The Department's geotechnical staff is concerned about some surficial movement on these slopes, particularly toward the eastern portion of the subject property, and may therefore require the maximum buffer authorized by code. There is no indication in the record that any further buffer width would be necessary to achieve adequate development impact mitigation.
 - D. Drainage from the subject property will be discharged via a seamless high-density polyethylene pipe to be installed above ground, extending from the subject property to George Davis Creek below, thus avoiding any disruption or erosion of the ravine slope. Above the 100-year flood limit of the creek, the pipe will discharge into an "energy dissipater", a device constructed of gabian basket, rip rap rock, or other design for the purpose of reducing discharge velocity to a level which precludes significant erosion.
 - E. Erosion during construction will be minimized by requiring temporary and sedimentation controls as established by the Surface Water Management Design Manual.
7. Section D of the Division's December 7, 1995, Preliminary Report to the King County Hearing Examiner (Exhibit No. 1) cites the scope and standard of review to be considered by the Examiner. The Division's summary is correct and will be used here. In addition, the following review standards apply:
- A. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.
 - B. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to "substantial weight". Having reviewed this

"substantial weight" rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency "negative threshold determination" is whether the action is "clearly erroneous". Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.

CONCLUSIONS:

1. As noted in Finding No. 7, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Division's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed. The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Division's determination.
2. The issues raised by the Appellant are valid reasons for concern. However, they do not approach the magnitude requisite for a Determination of Significance.
3. In addition, the following conclusions apply:
 - A. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of non-significance. Rather, the Appellant differs with the Division's assessment of impacts or the probability of potentially adverse impacts. Speculation with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.
 - B. Although the Appellant argues that the information on which the Division based its determination was insignificant, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous. It is incomprehensible that any reasonable person would follow the 206th Place N.E. route for ingress or egress when paved, two-lane public streets are available as alternative routes. These alternative routes, of course, must be improved by the Applicant as required by the Department's recommended conditions of final plat approval.
 - C. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. The Division has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Division, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Division's judgement in this case must be given substantial weight.
 - D. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Division's decision is not clearly erroneous and is supported by the evidence.
4. A denial of the appeal should not be construed to mean that adverse impacts will not occur or that the County should not require appropriate measures to mitigate probable impacts. The decision which follows below should be construed to mean no more than an EIS need not be prepared to further evaluate the probable impacts of the proposed development. The regulatory authority to impose appropriate conditions to achieve the public purposes enumerated in RCW 58.17.110 must be expected to be contained in the Examiner's Report to the King County Council regarding the proposed plat of Evergreen Garden, to be issued within ten days from this date.

DECISION:

The appeal is DENIED. No EIS or Mitigated DNS is required.

ORDERED this 23rd day of January, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 23rd day of January, 1996, to the following parties and interested persons:

Enayat & Mauri Aziz	Nicole & Gary Beedle
Laura & Duane Brady	Clancy & Linda Donlin
Jeff Fletcher	Earl E. Flatum
Geoff Jackson	Steve Johnson
Catherine Hay	Steve Hendricks
Mark D. Hornberger	Jim Keany
De-En Lang	Roger Leed
Dave Leek	Lou Lepp
Ling Lui	Robert Meriwether
Joyce Morey	Gary Norris
John Schier	John L. Scott Land Dept.

Steve Bottheim, DDES/Land Use Services Division
Lee Carte, DDES/Land Use Services Division
Kim Claussen, DDES/Land Use Services Division
Luanne Coachman, DDES/Environmental Division
Marilyn Cox, DDES/Environmental Division
Tom Koney, Metropolitan King County Council
Richard Lowe, DDES/Land Use Services Division
Ikuno Masterson, DDES/Environmental Division
Paulette Norman, Public Works
Lisa Pringle, DDES/Land Use Services Division
Ellen Turner, DDES/Environmental Division

MINUTES OF THE DECEMBER 7, 1995, JANUARY 3 AND 4, 1996 PUBLIC HEARING ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L95P0007 -
EVERGREEN GARDEN SEPA APPEAL:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Luanne Coachman, Richard Lowe, Steve Bottheim, Paulette Norman, De-En Lang, Enayat Aziz, Roger Leed, Earl Flatum, Nicole Beedle, Gary Norris, and Lou Lepp.

The following documents were offered and entered into the hearing record December 7, 1995:

Exhibit No. 1	Department of Development and Environmental Services Environmental Division SEPA Preliminary Staff Report to the King County Hearing Examiner for the December 7, 1995 public hearing
Exhibit No. 2A	Site Plans
2B	Environmental Checklist
Exhibit No. 3	GIS-generated vicinity map
Exhibit No. 4	Determination of Nonsignificance dated September 5, 1995
Exhibit No. 5	Appeal of Threshold Determination received on September 20, 1995
Exhibit No. 6	Subsurface Exploration and Geologic Hazards Report prepared by Associated Earth Sciences, Inc., with revision dated April 1991
Exhibit No. 7A	Draft EIS for the Tlingit Addition
B	Final EIS for the Tlingit Addition
Exhibit No. 8	Entire SEPA file
Exhibit No. 9	Letter dated November 14, 1995, from Aziz Engineering to Examiner
9A	Surveyor's notes regarding entering sight distances
Exhibit No. 10	Letter dated November 13, 1995, from ACG, Inc. to Mr. Aziz regarding wildlife, steep slopes, soils

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| Exhibit No. 11 | Annotated early plat map with existing features and suggested changes made by Mr. Aziz |
| Exhibit No. 12 | Letter dated December 12, 1995, from Mr. Aziz to Examiner with suggested mitigations |
| Exhibit No. 13 | Assessors map with annotations by Mr. Aziz |

The following documents were offered and entered into the hearing record January 4, 1996:

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| Exhibit No. 14 | Recommended additional language for plat |
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The following documents were entered on the Examiner's own motion and pursuant to the administrative continuance:

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| Exhibit No. 15 | Hearing record for Plat File No. L95P0007, including public hearing tape recordings, exhibits and file (by reference) |
| Exhibit No. 16 | Final arguments and suggested mitigation conditions of Appellant, dated January 16, 1996 |

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